

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

November 2, 2004

RECEIVED

NOV 03 2004

PUBLIC SERVICE
COMMISSION

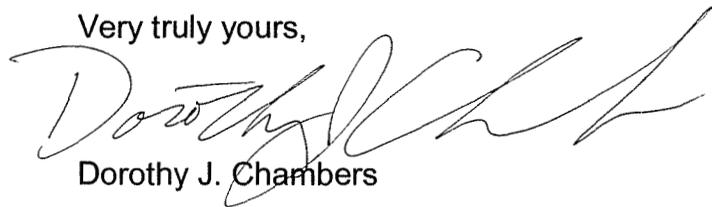
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Adoption of Interconnection Agreement Provision Between BellSouth Telecommunications, Inc. and Cinergy Communications Company by SouthEast Telephone, Inc.
PSC 2004-00235

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Reply to SouthEast Telephone, Inc.'s Response for Adoption of Portion of an Interconnection Agreement.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

555709

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION)
AGREEMENT PROVISION BETWEEN)
BELLSOUTH TELECOMMUNICATIONS,) CASE NO. 2004-00235
INC. AND CINERGY COMMUNICATIONS)
COMPANY BY SOUTHEAST TELEPHONE,)
INC.)

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO
SOUTHEAST TELEPHONE, INC.'S RESPONSE FOR
ADOPTION OF PORTION OF AN INTERCONNECTION AGREEMENT

INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, respectfully submits this Reply to SouthEast Telephone, Inc.'s ("SouthEast") Response to BellSouth's Motion for Rehearing.¹

In its Motion for Rehearing, BellSouth urged the Commission to reconsider its decision to apply the FCC's now-eliminated "pick-and-choose" rule to SouthEast's adoption request. SouthEast had sought to adopt a single provision, the dispute resolution provision, of an interconnection agreement between BellSouth and Cinergy Communications Company.

¹ BellSouth feels compelled to reply to SouthEast's response because SouthEast is attempting to avoid established legal principles with the claim that SouthEast's request to adopt is automatically effective upon filing, regardless of the requirements of the Interconnection Agreement or permissibility of the request itself. A "notice of intent to adopt" cannot serve as such an all-purpose "trump" to all other legal principles. BellSouth will not restate its previous arguments clearly establishing that the FCC regulations in effect at the time an interconnection agreement is reviewed must be applied to a pending matter. See, BellSouth's October 15, 2004 Motion for Rehearing at 2-4. BellSouth also will not restate that even if the old "pick and choose" rules had applied, SouthEast's request to adopt dispute resolution procedures still was impermissible because those procedures are not an interconnection service or network element. See, BellSouth's June 22, 2004 Objection at 2-3 and BellSouth's August 30, 2004 Response to Item No. 1 of the Commission's First Data Requests.

SouthEast's latest response attempts to bypass the established legal principal requiring application of the current, existing law to a pending matter, that is, the FCC's current rule regarding adoption of an interconnection agreement, or the "all-or-nothing,"² by the argument that its adoption request, was not a request at all, but rather an adoption notice that "was effective upon its receipt by BellSouth and this Commission. At that point, this matter came to a conclusion." SouthEast Reply at p. 3. This assertion, unsupported by citation to authority or to any portion of the parties' interconnection agreement ("ICA"), is completely contrary to the terms of the parties' ICA and is at odds with the original so-called "notice" filed by SouthEast.

SouthEast filed a "Notice of Intent to Adopt Certain Provisions Of An Interconnection Agreement" wherein SouthEast *requested*, among other things, for the Commission to issue an Order approving SouthEast's "request" and "[r]equiring BellSouth to file with the Commission a true and complete copy of the **approved** Amendment." SouthEast's Notice of Intent to Adopt Certain Provisions Of An Interconnection Agreement, filed June 8, 2004, at p. 3 (emphasis added). If, as SouthEast now asserts, the Notice of Intent was effective upon receipt, SouthEast would not need to request approval of its adoption request. Further, as discussed below, a binding contract amendment requires the agreement of both parties to the original contract. In this instance, the adoption request required the agreement of BellSouth. BellSouth gave no such agreement.

Additionally, SouthEast's assertion that the adoption request is effective upon receipt by BellSouth and the Commission disregards and is completely contrary to the adoption provision contained in the parties' ICA. The relevant portion of the parties' ICA provides:

² The "all-or-nothing" rule represents the FCC's interpretation of Section 252(i) and can be found at 47 C.F.R. 51.809.

BellSouth shall make available, pursuant to 47 U.S.C. § 252 and the FCC rules and regulations regarding such availability, to SouthEast any interconnection service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the terms of such Agreement. . . . BellSouth will endeavor to provide SETEL [SouthEast] with an amendment to incorporate the terms and conditions of any 252(i) request within ten (10) business days of such request. The effective date of such amendment shall be the date that both parties have signed the amendment.³

The adoption provision of the parties' ICA requires BellSouth to make adoption available pursuant to Section 252(i) of the Act, and **requires** SouthEast to request an adoption amendment from BellSouth. By filing its adoption request with the Commission without attempting to approach BellSouth seeking an ICA amendment, SouthEast failed to abide by the above-quoted ICA adoption terms and thus breached the parties' ICA. Further, the above-quoted language plainly states that an ICA amendment becomes effective only when executed by both parties. In short, SouthEast's assertion that its "Notice of Intent" to adopt was effective upon receipt cannot be squared with the plain language of the parties' ICA.

CONCLUSION

SouthEast's assertion that its adoption "notice" was effective upon receipt by BellSouth and the Commission is at odds with SouthEast's original adoption request and is contrary to the plain terms of the parties' ICA requiring Southeast to request an appropriate ICA amendment from BellSouth. Furthermore, as set forth in BellSouth's Motion for Rehearing, the Commission

³ General Terms and Conditions, Section 15, BellSouth/SouthEast ICA.

should apply existing law to a pending matter. Therefore, SouthEast's adoption request must be denied as it is impermissible under the FCC's current "all-or-nothing" rule.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dorothy J. Chambers", written over a horizontal line.

Dorothy J Chambers
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Telephone No. (502) 582-8219

Robert A. Culpepper
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone No. (404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

555698

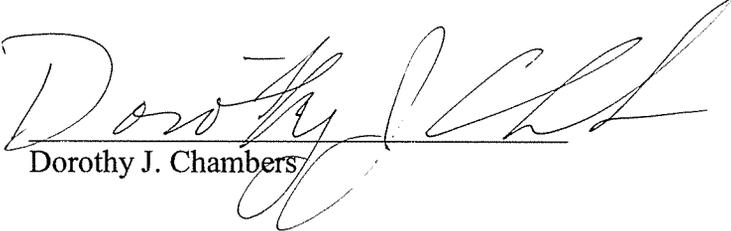
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 2nd day of November, 2004.

Hon. Jonathon N. Amlung
Attorney at Law
1000 Republic Building
429 W. Muhammad Ali Boulevard
Louisville, KY 40202

Darrell Maynard
SouthEast Telephone, Inc.
106 Power Drive
P.O. Box 1001
Pikeville, KY 41502-1001

Robert A. Bye
Corporate Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214


Dorothy J. Chambers